



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1996

Mr. Randel B. Gibbs
Law Offices of Earl Luna
4411 Central Building
4411 N. Central Expressway
Dallas, Texas 75205

OR96-0946

Dear Mr. Gibbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39655.

The Coppell Independent School District (the "district"), which you represent, received five requests from a requestor for information regarding certain professional services provided to the district that relate to a certain named student. Although you state that you have provided the requestor with some requested information, you claim that certain information, including attorneys' fees billing statements, is excepted from disclosure under sections 552.103 and 552.111 of the Government Code.¹

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision

¹In your original letter to this office concerning this matter, dated March 22, 1996, you also raised sections 552.101, 552.102, 552.107, and 552.114. However, as you did not explain how these exceptions applied to the requested information, we do not consider them. See Gov't Code § 552.301(b)(1); Open Records Decision No. 363 (1983).

No. 638 (1996) at 2-4, 551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). Open Records Decision No. 638 (1996) at 2.

You state that the district is currently a party to a lawsuit brought by the student named in the request for information, and have provided this office with a copy of the petition from this lawsuit. Because you have shown that the district is a party to pending litigation, you have satisfied the first prong of the test for section 552.103. You also argue that the requested attorneys' fees billing statements, as well as a portion of a billing statement from a psychologist, relate to the pending litigation. We agree that the descriptions of the services in entries relating to the pending lawsuit satisfy the second prong of the test for section 552.103. You have not explained, however, how all of the information in the billing statements relates to an issue in the pending litigation. Specifically, you have not shown that the amount or nature of attorneys' fees or psychologist's fees are at issue in this litigation. Therefore, we find that you may withhold under section 552.103 only the specific descriptions of services in the attorneys' fees billing statements that are related to this pending litigation, and the marked information in the psychologist's billing statement. You may not withhold the dates of services, the initials of the providers, or the time and dollar amounts associated with the services.²

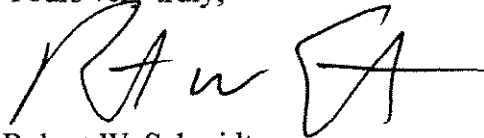
In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).³

²You state in your letter that certain entries contained in the attorneys' fees billing statements do not relate to the pending lawsuit and are therefore, not responsive to this request for information. Thus, you do not seek a ruling from this office on whether this information may be withheld from disclosure, and we do not rule on this information.

³The district also asserts that the marked portion of the psychologist's billing statement that contains a description of services is excepted from disclosure under section 552.111 of the Government Code. As we have held that the district may withhold this descriptive information under section 552.103, we do not address whether this information may also be withheld under section 552.111.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS' followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 39655

Enclosures: Marked documents

cc: Ms. Lisa Caldwell
601 Shadowcrest
Coppell, Texas 75019
(w/o enclosures)